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CLERK  
United States Bankruptcy Court  
San Jose, California

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN CALIFORNIA  
SAN JOSE DIVISION

In re: ) N.D. Cal. No. 08-00503  
)  
FRUEHAUF TRAILER CORPORATION, ) PENDING IN THE U.S BANKRUPTCY COURT  
et al., ) FOR THE DISTRICT OF DELAWARE  
)  
Debtors. ) Chapter 11  
) Case Nos. 96-1563  
) through 96-1572 (PJW)  
) Jointly Administered  
\_\_\_\_\_)  
DANIEL W. HARROW, AS SUCCESSOR )  
TRUSTEE OF THE END OF THE ROAD )  
TRUST, AND AMERICAN TRAILER )  
INDUSTRIES, INC., )  
)  
Plaintiff )  
s, ) Adv. Proc. No.: 07-50398-PJW  
)  
-against- )  
)  
CHRISS W. STREET, )  
)  
Defendant.

DEFENDANT CHRISS W. STREET'S OBJECTION AND  
MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS  
DANIEL W. HARROW AND AMERICAN TRAILER INDUSTRIES, INC.'S MOTION TO  
QUASH THE YAHOO, INC. SUBPOENA  
DUCES TECUM AND FOR COSTS AND FEES

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## NATURE AND STAGE OF PROCEEDING

On March 24, 2008, Defendant Chriss W. Street ("Mr. Street") issued a subpoena duces tecum (the "Yahoo Subpoena") to Yahoo, Inc. ("Yahoo"). On March 31, 2008, Yahoo issued its objections to the Yahoo Subpoena. On April 11, 2008, Plaintiffs Daniel W. Harrow, as trustee of the The End of the Road Trust (the "Trust"), and American Trailer Industries, Inc. (collectively, the "Plaintiffs") filed the Motion to Quash Subpoena, and for Costs and Fees (the "Motion to Quash") and a memorandum of law in support thereof. A hearing on the Motion is scheduled on May 22, 2008, at 3:00 p.m. This is Mr. Street's Objection and Memorandum of Law in opposition to the Motion to Quash.

Mr. Street respectfully submits that the Motion to Quash should be denied for several reasons. First, Plaintiffs lack standing to challenge the Yahoo Subpoena. Second, the Yahoo Subpoena is narrowly tailored to seek only non-privileged documents relevant to the claims, defenses and counterclaims in the Delaware Litigation (defined below). Third, documents produced by Plaintiffs will be protected by the confidentiality agreements entered in the litigation between the parties in the Delaware and the Electronic Storage Communication Act does not prevent Mr. Street from obtaining documents from Yahoo. Finally, Plaintiffs' request for attorneys' fees and costs are without merit and should be denied. Accordingly, Mr. Street respectfully requests that the Court enter an order denying the Motion to Quash.

## **FACTUAL BACKGROUND**

### **A. The Bankruptcy Case**

On October 7, 1996, Fruehauf Trailer Corporation and certain of its direct and indirect subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (“Delaware Bankruptcy Court”).

On or about July 28, 1998, the Debtors filed the Amended Joint Plan of Reorganization Dated July 28, 1998, as modified on September 17, 1998 (the “Plan”).

On September 17, 1998, the Delaware Bankruptcy Court entered the Order and Judgment Confirming the Debtors’ Amended Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code and Granting Related Relief (the “Confirmation Order”), in which the Delaware Bankruptcy Court confirmed the Plan. The Plan became effective on October 27, 1998.

On October 27, 1998, the Debtors, the Indenture Trustee and Mr. Street entered into the Liquidating Trust Agreement thereby establishing The End of the Road Trust (the “Trust”) pursuant to the Plan. Mr. Street and the Trust then entered into an employment agreement in which Mr. Street agreed to serve as trustee of the Trust. Mr. Street remained as trustee until his resignation became effective as of August 1, 2005, when was replaced by Daniel W. Harrow, the current trustee of the Trust (individually, “Mr. Harrow,” and as trustee of the Trust, the “Trustee”).<sup>1</sup>

On October 27, 1998, Mr. Street also entered into an employment contract with Frudemex, Inc. under which he became the chairman of the board and its chief executive officer.

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<sup>1</sup> Mr. Street’s resignation was finalized after August 1, 2005.

1 Frudemex, Inc. was later renamed American Trailer Industries, Inc. ("ATII"). ATII was wholly  
2 owned by the Trust.<sup>2</sup> Mr. Street remained in these offices until he resigned from his positions at  
3 ATII as of August 1, 2005.  
4  
5

6  
7 While serving as trustee and in furtherance of the provisions of the Liquidating Trust  
8 Agreement, Mr. Street hired in 2004 Libra Securities, LLC ("Libra"), a middle market  
9 investment banking services company, to act as the broker and evaluate the potential sale of  
10 ATII's wholly owned subsidiary, Fruehauf de Mexico S.A. de C.V. ("FdM"). Mr. Harrow was  
11 the investment manager from Libra that worked on and was responsible for the matter.  
12  
13

14 In addition to acting as the broker of FdM for the Trust while working at Libra, Mr.  
15 Harrow also served as a committee member of the administrative committee for the Pension  
16 Transfer Corporation (the "PTC"). The PTC was the sponsor of the Fruehauf Trailer Employees  
17 Retirement Trust.  
18  
19

20 Effective August of 2005, Mr. Harrow replaced Mr. Street as Trustee of the Trust and  
21 chairman of the board and chief executive officer of ATII. Upon his resignation, Mr. Street  
22 turned over to the Trustee all documents and information in his possession relating to the Trust  
23 and its various related entities, including ATII.  
24  
25

## 26 **B. The Delaware Litigation**

27 On or about February 2, 2007, the Trustee commenced an adversary proceeding against  
28 Mr. Street in the Delaware Bankruptcy Court (the "Delaware Litigation") by filing a complaint.  
29 On April 5, 2007, the Plaintiffs filed an Amended Complaint that asserts 254 allegations  
30 consisting of thirteen claims for alleged breaches of fiduciary duties, breaches of contract, fraud  
31 and conversion that span an eight year time frame since 1998. See Exhibit A to the Affidavit of  
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49 <sup>2</sup> The shares of ATII were distributed to certain beneficial interest holders of the Trust in the Spring  
50 of 2007.

1 Scott G. Wilcox in Support of Memorandum of Law in Opposition to Plaintiffs Daniel W.  
2  
3 Harrow and American Trailer Industries, Inc.'s Motion to Quash the Yahoo, Inc. Subpoena  
4  
5 Duces Tecum and for Costs and Fees (the "Wilcox Aff."),  
6

7  
8 On July 2, 2007, Mr. Street filed the Answer and Affirmative Defenses of Chriss W.  
9  
10 Street to Amended Complaint and Counterclaim of Chriss W. Street against Daniel W. Harrow,  
11  
12 as Successor Trustee of The End of the Road Trust, and American Trailer Industries, Inc.  
13

14 On July 20, 2007, Mr. Street filed the Amended Answer and Affirmative Defenses of  
15  
16 Chriss W. Street to Amended Complaint and Counterclaim of Chriss W. Street against Daniel W.  
17  
18 Harrow, as Successor Trustee of The End of the Road Trust, and American Trailer Industries,  
19  
20 Inc. in which Mr. Street denied any liability for the claims asserted in the Amended Complaint,  
21  
22 asserted various affirmative defenses and asserted various counterclaims against the Plaintiffs.  
23  
24 See Exhibit B to Wilcox Aff.  
25

26  
27 In July of 2007, the parties began engaging in fact discovery in the Delaware Litigation.  
28  
29 Mr. Street issued numerous discovery requests seeking to gain access to, *inter alia*, the  
30  
31 documents and information he turned over to the Trustee at the time of his resignation relating to  
32  
33 the Trust and its various related entities. Mr. Street also issued a number of third party  
34  
35 subpoenas in an effort to obtain necessary discovery from related parties in order to defend  
36  
37 against the Plaintiffs' claims and to prosecute his own claims.  
38  
39

40 Upon receipt of the documents requests, Plaintiffs contacted almost half of the third  
41  
42 parties and instructed them to withhold the production of documents until a confidentiality order  
43  
44 was entered into the Delaware Litigation. The parties ultimately entered into one confidentiality  
45  
46 order and the Court ordered a second order. See Exhibit C and D to Wilcox Aff. Upon agreeing  
47  
48 to be bound by the confidentiality orders, certain third parties produced documents. Many third  
49  
50

1 parties have failed to respond and Mr. Street has filed motions seeking to compel some the third  
2  
3 parties to comply with the subpoenas.  
4

5 During the course of discovery, Mr. Street has been forced to file no less than five  
6  
7 motions seeking to compel Plaintiffs to comply with various orders entered by the Delaware  
8  
9 Bankruptcy Court and with their obligations under the Federal Rules of Bankruptcy Procedure  
10  
11 (the "Bankruptcy Rules"). In addition, Mr. Street has been forced to defend against at least two  
12  
13 motions for protective orders filed by Plaintiffs attempting to avoid their discovery obligations.  
14  
15

16 On August 27, 2007, the Delaware Bankruptcy Court ordered, *inter alia*, that Mr. Street  
17  
18 is entitled to documents created both before and after his tenure as trustee (August 1, 2005)  
19  
20 because "the amended complaint is wide ranging." *See* Exhibit E to Wilcox Aff. The Delaware  
21  
22 Bankruptcy Court further ordered that Mr. Street is entitled to FdM documents. *Id.*  
23  
24

### 25 **C. AT&T Subpoena**

26

27 Based upon documents produced in discovery, Mr. Street determined that it was  
28  
29 necessary to seek production of emails from Mr. Harrow's personal email account that, upon  
30  
31 information and belief, was utilized by Mr. Harrow while performing services for the Trust and  
32  
33 ATII, both prior to and after becoming Trustee and an officer of ATII. On or about February 13,  
34  
35 2008, Mr. Street served a subpoena duces tecum on AT&T Internet Services (the "AT&T  
36  
37 Subpoena"). *See* Exhibit A to the Affidavit of Sarah Doerr in Support of Motion to Quash the  
38  
39 Subpoena, and for costs and fees. The AT&T Subpoena seeks six well-defined categories of  
40  
41 documents from Mr. Harrow's personal email account, including the categories of documents  
42  
43 sought in the Yahoo Subpoena.,  
44  
45

46 On February 25, 2008, AT&T served Mr. Street with its objections and response to the  
47  
48 AT&T Subpoena (the "AT&T Response"). *See* Exhibit F to Wilcox Aff. In the AT&T  
49  
50



1 Response, AT&T stated that it did not maintain the information that was sought in the AT&T  
2  
3 Subpoena and that this information was maintained by Yahoo.  
4

5 On March 3, 2008, Mr. Street and Plaintiffs held a meet-and-confer teleconference to  
6  
7 discuss the AT&T Subpoena. During the call, Plaintiffs acknowledged receipt of the AT&T  
8  
9 Response and AT&T's representation that it did not have any responsive documents in its  
10  
11 possession and would therefore not be producing any documents in response to the AT&T  
12  
13 Subpoena. Notwithstanding, Plaintiffs continued to demand that Mr. Street withdraw the AT&T  
14  
15 Subpoena and filed a Motion to Quash the AT&T Subpoena in the United States Bankruptcy  
16  
17 Court for the Northern District of Texas, Dallas Division ("Texas Bankruptcy Court") on March  
18  
19 4, 2008. *See* Exhibit G to Wilcox Aff.  
20  
21

22  
23 In a further effort to amicably resolve the dispute without wasting judicial resources, Mr.  
24  
25 Street wrote to Plaintiffs on March 7, 2008, offering to withdraw the AT&T Subpoena if  
26  
27 Plaintiffs agreed to withdraw the Motion to Quash. Ultimately, Plaintiffs withdrew the motion to  
28  
29 quash but continued to request attorney's fees and costs. On April 22, 2008, the Texas  
30  
31 Bankruptcy Court entered an order denying Plaintiffs' motion finding no basis for awarding  
32  
33 attorney's fees or costs. *See* Exhibit H to Wilcox Aff.  
34  
35

36 **D. Yahoo Subpoena**  
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38 On or about March 24, 2008, Mr. Street served the Yahoo Subpoena. *See* Exhibit B to  
39  
40 the Affidavit of Sarah Doerr in Support of Motion to Quash the Subpoena, and for Costs and  
41  
42 Fees. The Yahoo Subpoena seeks four well-defined categories of documents from Mr. Harrow's  
43  
44 personal email account that, upon information and belief, was utilized by Mr. Harrow while  
45  
46 performing services for the Trust and ATII, both before and after becoming Trustee. Each of the  
47  
48 document requests in the Yahoo Subpoena were drafted specifically to seek only documents  
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1 relevant to the claims, defenses and counterclaims in the Delaware Litigation. Each of the  
2  
3 document requests were limited in temporal scope from 1998 to the present. *Id.*  
4

5 Specifically, the Yahoo Subpoena seeks (1) documents regarding the Debtors' 401K  
6 plan, its pension plan, the PTC and the Pension Benefit Guaranty Company, (2) communications  
7 that include, as a sender or recipient or in the body or subject line of the electronic mail, certain  
8 specifically named individuals or entities that were either on the advisory committee to the Trust,  
9 were employees of the Trust or its related entities, or otherwise assisted or were involved with  
10 affairs of the Trust and ATII (including law firms and attorneys that were retained by the Trust  
11 and/or its related entities during Mr. Street's tenure as trustee), (3) communications that include,  
12 as a sender or recipient or in the body or subject line of the electronic mail, certain terms  
13 frequently used to describe the advisory committee to the Trust and its pension plan, the Trust  
14 and its related entities, and individuals or entities that otherwise assisted or were involved with  
15 affairs of the Trust and ATII and (4) communications between the current trustee and two news  
16 outlet and two reporters that have written articles about the Delaware Litigation that have been  
17 slated against Mr. Street. *See Id.*  
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33 On March 27, 2008, before receiving any response from Yahoo, Mr. Street received a  
34 letter from Plaintiffs demanding that the Yahoo Subpoena be withdrawn. *See* Exhibit C to the  
35 Affidavit of Sarah Doerr in Support of Motion to Quash the Subpoena, and for costs and fees.  
36 On March 31, 2008, Yahoo served Mr. Street with its objections and response to the Yahoo  
37 Subpoena (the "Yahoo Response").  
38  
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44 On April 8, 2008, counsel for Plaintiffs left a message with counsel for Mr. Street seeking  
45 a meet-and-confer to discuss Plaintiffs' objections. Although Plaintiffs state that they did not  
46 receive a response from Mr. Street as of the filing of the Motion to Quash (Motion to Quash, p.  
47  
48  
49  
50

1 6), on April 11, 2007, at 5:16 p.m. (EDT), Mr. Street sent Plaintiffs an e-mail refusing to  
2  
3 withdraw the Yahoo Subpoena because there was no legal basis to do so. *See* Exhibit I to  
4  
5 Wilcox Aff. On that same day, at 5:20 p.m. (EDT), counsel for Mr. Street sent an e-mail to  
6  
7 counsel for Plaintiffs advising of his availability for a meet-and-confer.<sup>3</sup> *See* Exhibit J to Wilcox  
8  
9 Aff.  
10

11  
12 On April 11, 2008, instead of setting up a meet-and-confer, Plaintiffs filed the Motion to  
13  
14 Quash. Plaintiffs challenge the Yahoo Subpoena because it allegedly: (i) seeks privileged  
15  
16 communications (Argument II); (ii) seeks competitively sensitive and highly confidential  
17  
18 business communication (Argument III); (iii) is unduly burdensome, overbroad and duplicative;  
19  
20 and (iv) seeks private, personal communications in violation of Mr. Harrow's rights the  
21  
22 Electronic Stored Communications Act ("SCA").  
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48 <sup>3</sup> According to the docket, the Motion to Quash was filed at 3:33 p.m. (PDT). (D.I. 1) Therefore,  
49 Plaintiffs had notice of Mr. Street's position on the request to withdraw the Yahoo Subpoena and on  
50 setting up a meet-and-confer before they filed the Motion to Quash.

**ARGUMENT**

**I. PLAINTIFFS LACK STANDING TO SEEK TO QUASH THE YAHOO SUBPOENA**

A party generally can only assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004). Thus, a party to litigation lacks standing to challenge a subpoena issued to a non-party unless the party has a personal right or privilege to the materials subpoenaed. *Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979).

The Motion to Quash is an improper attempt by Plaintiffs to assert the individual rights of Mr. Harrow. The title of the first argument recognizes this fact- "Mr. Harrow Has Standing to Move to Quash the Yahoo! Subpoena." Motion to Quash, p. 6. Plaintiffs argue that "Mr. Harrow claims both a personal right and a privilege in the documents sought by the Subpoena." *Id.* And that "the e-mails sought in the Subpoena implicate Mr. Harrow's personal privacy rights in the communications sent to and from his personal e-mail account." *Id.*

The Yahoo Subpoena seeks communications from Mr. Harrow's personal email account. Therefore, any personal privacy rights allegedly violated, which Mr. Street disputes, belong to Mr. Harrow in his individual capacity.<sup>4</sup> Mr. Harrow has his own private counsel who issued an objection to the Delaware Litigation and in response AT&T Subpoena See Exhibit K to Wilcox Aff. Plaintiffs, as parties to the Delaware Litigation, cannot assert Mr. Harrow's individual rights as a basis to quash the Yahoo Subpoena. See *Kowalski v. Tesmer*, *supra*. Thus, Plaintiffs

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<sup>4</sup> Even if Mr. Harrow individually asserted his privacy rights, such a challenge would fail. Upon information and belief, Mr. Harrow used the email account subject to the Yahoo Subpoena while performing services for the Trust and its related entities before and after he served as Trustee of the Trust and the Yahoo Subpoena is narrowly tailored to seek only those relevant communications.

1 have failed to establish a legal right to challenge the Yahoo Subpoena and the Motion to Quash  
2  
3 must be denied.  
4

5         Moreover, as discussed in more detail below, any challenge by Plaintiffs to the Yahoo  
6  
7 Subpoena based upon their own claim of privilege or that the communications sought are  
8  
9 competitively sensitive and highly confidential business communications must fail. Mr. Street  
10  
11 was trustee of the Trust and an officer of ATII from 1998 until 2005. Therefore, any documents  
12  
13 produced during this period would not be subject to a claim of privilege. Moreover, the  
14  
15 Confidentiality Orders in place in the Delaware Litigation would protect any competitively  
16  
17 sensitive or confidential business communications.  
18  
19

20         Finally, Plaintiffs concede that the right to challenge the Yahoo Subpoena on the basis  
21  
22 that it seeks private and personal communications in violation of the SCA rests solely with Mr.  
23  
24 Harrow. Motion to Quash, p. 13 ("If Yahoo! were to comply with the Subpoena, Mr. Harrow  
25  
26 would have a cause of action against Yahoo! for violation of the SCA."). Again, this right is  
27  
28 maintained by Mr. Harrow and not Plaintiffs.  
29  
30

31         Based on the foregoing, the Motion to Quash should be denied because Plaintiffs lack the  
32  
33 authority to assert the individual rights of Mr. Harrow and lack a personal right or privilege to  
34  
35 have standing to challenge the Yahoo Subpoena.  
36  
37

## 38         **II. THE YAHOO SUBPOENA IS NARROWLY TAILORED.**

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40         Plaintiffs make the unsupported argument that "the information sought  
41  
42 is, by definition, duplicative of the information sought through subpoenas  
43  
44 issued to those other parties to the communication." Motion to Quash, p. 12.  
45  
46 Plaintiffs have provide no evidence that the information requested in the  
47  
48 Yahoo Subpoena has been produced by a third party. In fact, several third  
49  
50 parties have not responded at all to subpoenas issued to them by Mr. Street.  
Additionally, even if a document is requested from one party to a

1 communication, a party is not prevented from requesting the same document  
2  
3 from another party or third-party. All of the parties may not have retained  
4  
5 the communication, there may be several versions of the communication, etc.  
6  
7 Thus, it is completely permissible to seek the same documents from several  
8  
9 parties.

10 Plaintiffs also challenge the Yahoo Subpoena alleging that it sets  
11  
12 forth an impossible task for Yahoo to handle, places undue financial burden  
13  
14 on Yahoo and implicates Mr. Harrow's personal rights. Motion to Quash, p.  
15  
16 12. Plaintiffs, however, lack standing to assert the rights of Yahoo and of  
17  
18 Mr. Harrow in response to the Yahoo Subpoena. Moreover, the Yahoo Subpoena  
19  
20 is narrowly tailored to identify specific entities and persons so as to make  
21  
22 any search and review conducted by Yahoo easily manageable.

### 23 **III. THE YAHOO SUBPOENA DOES NOT SEEK PRIVILEGED** 24 **COMMUNICATIONS**

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25  
26 Plaintiffs challenge the Yahoo Subpoena based upon a claim of privilege alleging that it  
27  
28 seeks documents from six law firms and eight attorneys but does not provide Yahoo with the  
29  
30 ability to withhold these documents from production. *See* Motion to Quash, at 7. This argument  
31  
32 is a red herring.

33  
34 The Yahoo Subpoena is narrowly tailored to only request communications that include  
35  
36 attorneys and law firms that provided services to the Trust or ATII while Mr. Street acted as the  
37  
38 trustee and an officer of ATII and does not seek communications that include the Trust's or  
39  
40 ATII's counsel since the end of Mr. Street's tenure. Thus, any documents produced during this  
41  
42 period would not be privileged. Furthermore, any document from 1998 to 2005 that Mr. Harrow  
43  
44 sent or received would not be privileged because he was a third party during this time period.  
45  
46

47  
48 Moreover, Mr. Harrow concedes in his affidavit filed in support of the Motion to Quash  
49  
50 that he only began communicating with his counsel using his personal email at issue in the

1 Yahoo Subpoena on January 1, 2008. *See* Affidavit of Daniel W. Harrow in Support of Motion  
2  
3 to Quash the Subpoena. Therefore, any privileged communications between the Trustee and  
4  
5 counsel would be limited to January 1, 2008. to the present.  
6

7  
8 Plaintiffs also argue that the Yahoo Subpoena is an attempt by Mr. Street to circumvent  
9  
10 an order issued in the Delaware Litigation. Motion to Quash, p. 8. This is incorrect. The order  
11  
12 referenced is a limitation on Plaintiffs' obligation to produce a privilege log for documents  
13  
14 created after February 2, 2007. *See* Exhibit D, p. 33 to Affidavit of Sarah Doerr in Support of  
15  
16 Motion to Quash the Subpoena, and for costs and fees. The Order does not limit Plaintiffs'  
17  
18 obligation to produce relevant documents created after February 2, 2007, or documents produced  
19  
20 by third parties.  
21

22  
23  
24 **IV. PLAINTIFFS PRESENT NO EVIDENCE THAT RESPONSIVE DOCUMENTS**  
25 **MAY CONTAIN COMPETITIVELY SENSITIVE AND HIGHLY**  
26 **CONFIDENTIAL BUSINESS COMMUNICATIONS.**  
27

28 Plaintiffs suggest that the Yahoo Subpoena seeks to require Yahoo to produce hundreds,  
29  
30 if not thousands, of documents that may contain competitively sensitive and highly confidential  
31  
32 business communications. Motion to Quash, p. 9. Similarly, this argument is a red herring.  
33

34  
35 The Yahoo Subpoena is very narrowly tailored to obtain documents relevant to the  
36  
37 Delaware Litigation, including documents relating to the Trust and its related entities. The only  
38  
39 documents that could arguably contain competitively sensitive or highly confidential matters  
40  
41 would those relating to Plaintiff ATII's wholly owned subsidiary, FdM. The Delaware  
42  
43 Bankruptcy Court has already ruled that "the amended complaint [in the Delaware Litigation] is  
44  
45 wide ranging, with 254 paragraphs addressing 14 separate counts" and held that documents from  
46  
47 FdM are discoverable. *See* Exhibit E to Wilcox Aff.. In addition, in order to protect any  
48  
49 proprietary information produced in discovery, two separate confidentiality orders have been  
50

1 entered in the Delaware Litigation. See Exhibits C and D to Wilcox Aff.. The parties have  
2  
3 extended the confidentiality orders to third parties so that any documents requested that may  
4  
5 contain sensitive or proprietary are also kept confidential. Accordingly, even assuming there are  
6  
7 documents that contain competitively sensitive and highly confidential business  
8  
9 communications, they are require to be produced and are protected under the confidentiality  
10  
11 orders.  
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15 **V. THE ELECTRONIC STORED COMMUNICATIONS ACT DOES NOT SERVE**  
16 **AS A BASIS TO QUASH THE SUBPOENA**  
17

18 The SCA provides a cause of action against a provider of electronic communication  
19  
20 services who knowingly accesses electronic communications without the authorization of the  
21  
22 user. 18 U.S.C. § 2701(a)(1) (emphasis added). Accordingly, as Plaintiffs recognize in the  
23  
24 Motion to Quash, the SCA arguably provides Mr. Harrow with a potential cause of action against  
25  
26 Yahoo. Motion to Quash, p. 13 (“If Yahoo! were to comply with the Subpoena, Mr. Harrow  
27  
28 would have a cause of action against Yahoo! for violation of the SCA.”). The SCA does not,  
29  
30 however, provide Plaintiffs with a cause of action against Mr. Street and is not a basis to quash  
31  
32 the Yahoo Subpoena.  
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36 **VI. PLAINTIFFS ARE NOT ENTITLED TO ATTORNEY’S FEES OR COSTS**  
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38 Plaintiffs claim that they are entitled to attorney’s fees and costs because Mr. Street failed  
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40 to respond to Plaintiffs’ objections to the Yahoo Subpoena and request for a meet-and-confer  
41  
42 therefore demonstrating his alleged intentions when issuing the Yahoo Subpoena to “harass and  
43  
44 distract *counsel for Mr. Harrow*.” Motion to Quash, p. 14. As discussed above, Plaintiffs lack  
45  
46 standing to assert Mr. Harrow’s individual rights. Moreover, Plaintiffs misrepresent the facts.  
47  
48 Mr. Street responded to Plaintiffs’ objections and request for a meet-and-confer prior to the filing  
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1 of the Motion to Quash. *See* Exhibit I to Wilcox Aff. 4/11/08 emailed attaching letter (sent at  
2  
3 5:16 EDT) and Exhibit J to Wilcox Aff. email of 4/11/08 (sent at 5:20 EDT). Plaintiffs chose to  
4  
5 ignore both pieces of correspondences and instead filed the Motion to Quash at 3:33 p.m. PDT (  
6  
7 7:33 p.m. EST). Plaintiffs have present no evidence to justify an award of fees or costs. As  
8  
9 noted herein, the Yahoo Subpoena was very narrowly tailored to only obtain documents relevant  
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11 to the Delaware Litigation. As such, Plaintiffs' request for attorneys' fees and costs should be  
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13 denied.  
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**CONCLUSION**

For the aforementioned reasons, Chriss W. Street respectfully requests that the Court enter an order denying Plaintiffs Motion to Quash the Yahoo Subpoena.

Dated: May 8, 2008

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